

HOLTZMAN & MCCLAIN, P.C.

A Professional Corporation
524 Maple Avenue, Suite 200
Linwood, New Jersey 08221
(609) 601-0900
SDH 9921

Attorneys for Defendant CFG Health Systems, LLC (incorrectly named as CFG, Inc.)

Chucuan Winstead,

Plaintiff(s),

v.

Essex County Department of Corrections, County of Essex d/b/a Essex County Department of Corrections, Alfaro Ortiz individually and in his official capacity as Director of Essex County Department of Corrections, Roy Hendricks, individually and in his capacity as Warden of the Essex County Department of Corrections, Ms. Green, individually and in her official capacity as Corrections Officer for the Essex County Department of Corrections, and John Does 1-10,

Defendant(s)/Third Party Plaintiff(s),

v.

CFG, Inc.

Third Party Defendant(s).

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

Case No. 13-cv-05147 (KSH) (CLW)

Civil Action

**Answer to Third Party Complaint
by CFG Health Systems, LLC**

Third Party Defendant CFG Health Systems LLC, incorrectly named as CFG, Inc. in the Third Party Complaint, by way of Answer Defendant/Third Party Plaintiffs' Complaint says:

1. It is admitted that Defendant CFG Health Systems, LLC had a contract to provide certain services to Essex County and the remainder of this paragraph the Third Party Defendant is left to their proofs.
2. It is admitted that Defendant CFG Health Systems, LLC had a contract to provide certain services to Essex County and the remainder of this paragraph the Third Party Defendant is left to their proofs.

3. Denied that there is any liability to the Third Party Plaintiff with respect to the Third Party Complaint or Plaintiff Chucuan Winstead with respect to his Complaint and each and every allegation of Plaintiff Chucuan Winstead's Complaint is denied.

Wherefore, Third Party Defendant CFG Health Systems, LLC demands judgment dismissing Defendant/Third Party Plaintiffs' and Plaintiff's Complaint together with attorney fees and cost.

SEPARATE DEFENSES

FIRST SEPARATE DEFENSE

This Third Party Defendant denies that they were in any way negligent.

SECOND SEPARATE DEFENSE

This Third Party Defendant asserts that if there was any negligence or violation of Plaintiff's rights, it was done by an independent intervening agency, person or instrumentality over whom this Third Party Defendant had no control.

THIRD SEPARATE DEFENSE

This Third Party Defendant denies that they breached any duty owed to Plaintiff or any Defendant/Third Party Plaintiff on any claims.

FOURTH SEPARATE DEFENSE

This Third Party Defendant asserts that proper medical care was rendered to Plaintiff and that he was not denied proper medical care.

FIFTH SEPARATE DEFENSE

This Third Party Defendant asserts that none of Plaintiff's constitutional rights have been breached.

SIXTH SEPARATE DEFENSE

This Third Party Defendant asserts that the claims of Plaintiff and any and all other claims are barred for failure to state a claim upon which relief can be granted.

SEVENTH SEPARATE DEFENSE

This Third Party Defendant asserts that Plaintiff's claims are barred pursuant to the New Jersey Tort Claims Act, Title 59 of the New Jersey Statutes.

EIGHTH SEPARATE DEFENSE

This Third Party Defendants asserts that Third Party Plaintiff and Plaintiff's claims, if any, were proximately caused by Plaintiff's negligence and that Plaintiff contributed to the happening of the occurrence and his claims are therefore barred and subject to diminution pursuant to the Comparative Negligence Statute of the state of New Jersey.

NINTH SEPARATE DEFENSE

This Third Party Defendant contends that Plaintiff's claim is a Frivolous Lawsuit pursuant to Federal Rules of Procedure Rule 11 and that sanction, costs and attorney's fees should be issued with respect to this Plaintiff.

TENTH SEPARATE DEFENSE

This Third Party Defendant denies that they breached any duty that was owed to Plaintiff and/or to any Defendant/Third Party Plaintiff on any claims with respect to the reasonable and necessary medical care which has been provided to Plaintiff.

ELEVENTH SEPARATE DEFENSE

This Third Party Defendant asserts that the claims of the Plaintiff are barred by the Statute of Limitations.

TWELFTH SEPARATE DEFENSE

This Third Party Defendant asserts that the any claims of any Defendant/Third Party Plaintiff are improperly pleaded and improperly served upon this Defendant.

THIRTEENTH SEPARATE DEFENSE

This Third Party Defendant asserts that the any claims of any Defendant/Third Party Plaintiff improperly identify this Third Party Defendant and do not comply with the Federal Rules of Procedure.

FOURTEENTH SEPARATE DEFENSE

This Third Party Defendant asserts that Plaintiff's claim is improper and violates the Prison Litigation Reform Act (P.L.R.A.) and should be dismissed.

FIFTEENTH SEPARATE DEFENSE

This Third Party Defendant asserts that both Defendant/Third Party Plaintiff and Plaintiff have failed to file an appropriate Affidavit of Merit against CFG Health Service, LLC, which is a provider of health care services at a health care facility pursuant to New Jersey Statutes.

SIXTEENTH SEPARATE DEFENSE

This Third Party Defendant asserts that Plaintiff has failed to exhaust all available Administrative Remedies.

SEVENTEENTH SEPARATE DEFENSE

This Third Party Defendant is entitled to a credit for any expense paid by insurance or other third parties which are claimed as damages by Plaintiff pursuant to N.J.S.A. 2A:15-97.

EIGHTEENTH SEPARATE DEFENSE

While denying liability to the Plaintiff, this Third Party Defendant asserts that if any Defendant/Third Party Plaintiff effects a settlement with Plaintiff, this Third Party Defendant shall seek a molding of the verdict to reflect its proportionate liability pursuant to the provisions of the Comparative Negligence Act and pursuant to the principles set forth in Young v. Latta, 233 N.J. Super. 520 (App. Div. 1989).

NINETEENTH SEPARATE DEFENSE

This Third Party Defendant asserts that the claim for punitive damages is made in bad faith, and solely for the purposes of harassment, delay or malicious injury, and therefore, seek any and all remedies available under the Statute for Frivolous Pleadings, with regards to any claims for reckless conduct, or seeking punitive damages, pursuant to N.J.S.A. 2A:15-59.1.

TWENTIETH SEPARATE DEFENSE

Plaintiff's claim for punitive damages is in violation of the United States Constitution and New Jersey Constitution and, thus, Plaintiff cannot recover damages against these Third Party Defendants.

TWENTY-FIRST SEPARATE DEFENSE

This Third Party Defendant asserts that there has been no violation of any of Plaintiff's 42 U.S.C. 1983 rights.

TWENTY-SECOND SEPARATE DEFENSE

This Third Party Defendant denies that it is liable for any violation of any constitutional right or statutes claimed by the Plaintiff.

TWENTY-THIRD SEPARATE DEFENSE

This Third Party Defendant asserts that they acted within the scope of its authority, and that it is entitled to governmental and qualified immunity.

TWENTY-FOURTH SEPARATE DEFENSE

This Third Party Defendant asserts that Plaintiff's medical treatment was proper, based on the accepted standard of medical care and accepted constitutional standards.

TWENTY-FIFTH SEPARATE DEFENSE

This Third Party Defendant asserts that they cannot be held liable pursuant to the Doctrine of *Respondeat Superior* for any of Plaintiff's claims.

HOLTZMAN & McCLAIN, P.C.
/s/ Stephen D. Holtzman (SDH 9921)
Stephen D. Holtzman, Esquire
Attorney for Third Party Defendants CFG Health Systems, LLC

Dated: October 15, 2013

ANSWER TO ALL CROSS-CLAIMS

Third Party Defendant CFG Health Systems, LLC; hereby denies each and every allegation contained in any and all cross-claims filed by any and all Defendants in this matter.

HOLTZMAN & McCLAIN, P.C.
/s/ Stephen D. Holtzman (SDH 9921)
Stephen D. Holtzman, Esquire
Attorney for Third Party Defendants CFG Health Systems, LLC

Dated: October 15, 2013

DEMAND FOR JURY TRIAL

Third Party Defendant CFG Health Systems, LLC, hereby demands a trial by jury on all issues raised by these pleadings.

HOLTZMAN & McCLAIN, P.C.
/s/ Stephen D. Holtzman (SDH 9921)
Stephen D. Holtzman, Esquire
Attorney for Third Party Defendants CFG Health Systems, LLC

Dated: October 15, 2013

NOTICE OF DESIGNATION OF TRIAL COUNSEL

TAKE NOTICE that STEPHEN D. HOLTZMAN, is hereby designated as trial counsel on behalf of Third Party Defendant CFG Health Systems, LLC.

HOLTZMAN & McCLAIN, P.C.
/s/ Stephen D. Holtzman (SDH 9921)
Stephen D. Holtzman, Esquire
Attorney for Third Party Defendants CFG Health Systems, LLC

Dated: October 15, 2013

PROOF OF E-FILING AND SERVICE

I certify that the attached Answer on behalf of Third Party Defendant CFG Health Systems, LLC; has been filed through Electronic Case Filing on October 15, 2013 and served upon Plaintiff and all defendants of record by Electronic Case Filing.

HOLTZMAN & McCLAIN, P.C.
/s/ Stephen D. Holtzman (SDH 9921)
Stephen D. Holtzman, Esquire
Attorney for Third Party Defendants CFG Health Systems, LLC

Dated: October 15, 2013